

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 248 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

P. MILAN TRADING CORPN, Jamnagar

Versus

COMMISSIONER OF INCOME TAX, Rajkot

Appearance:

MR D.A. MEHTA, MR R.K. PATEL AND MR B.D. KARIA,
Advocates for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 28/11/96

ORAL JUDGEMENT (Per R.Balia,J.)

At the instance of the assessee, two questions of law said to be arising out of its order in ITA No. 1555/Ahd/79 concerning assessment year 74-75 have been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench "A". with the

statement of the case.

2. In his reference application under Section 256(1) the assessee had suggested six questions which read as under:-

1. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in confirming the addition of Rs. 1,24,600?
2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in solely relying upon the bank Manager's version while deciding the legal character and true import in commercial practice of the trust Receipt?
3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in placing the burden on the assessee, and in holding that the same was not discharged even when the Tribunal itself had failed to take into consideration various evidence produced, and thus the final finding is not vitiated in law?
4. Whether on the facts and in the circumstances of the case the Tribunal's finding, as to the conduct of the assessee with special reference to the assessee's contention regarding availability of unpledged stock holding that the same of no consequence can be justified in law and is sustainable from material on record?
5. Whether on the facts and in the circumstances of the case, the Tribunal's ultimate conclusion can be justified in law it having taken into consideration irrelevant material in the form of past events unconnected with the issue at hand and it having ignored undisputed documentary evidence in form of letters etc. of third parties?
6. Whether the Tribunal's ultimate finding confirming the addition in question is not perverse, the same being based on mere inferences, conjectures and surmises and against material and evidence on record?

The aforesaid questions are reproduced for the purpose of pointing out the various aspects of the controversy, which had been encompassed in the questions

referred to us, inasmuch as the Tribunal itself has, instead of rejecting any of the questions suggested by the assessee, had made it clear that the following questions referred by it will be sufficient to cover the points raised in the aforesaid questions:-

1. "Whether on the facts and in the circumstances of the case and the material on record the Tribunal was justified in law in confirming the addition of Rs. 1,24,600?"
2. "Whether the Tribunal was justified in law in basing its conclusion on material and past events which had no connection with the controversy at issue?"

The facts which has led to this reference may be briefly noticed as has been founded by the Tribunal. In the assessment year 1974-75, the assessee firm purchased 200 M.T of chicory roots from Messrs Raxor Chicory Supply Co. of Jamnagar. For the purpose of this purchase a loan was advanced by the assessee firm to the said concern. The said loan was made by two cheques drawn on State Bank of Saurashtra, Jamnagar and in order to secure funds from bank, the assessee had pledged said 200 MT of chicory roots with the Saurashtra Bank. The records of State Bank of Saurashtra showed that the 200 MT of chicory was pledged with the said State Bank of Saurashtra on 18th Sept. 1973 and 19th Sept. 1973. The Income Tax Officer, during the assessment proceedings had found that on 18th Sept. 73 and on 19th Sept. 73 only 100.230 MT of chicory roots were received from the transaction with Raxor Chicory Supply Co. and assessee was required to explain that though the quantity of chicory roots pledged with the State Bank of Saurashtra in the relevant register is shown to be 100MT each on 18.9.73 and 19.9.73, which was at variance with the receipt of goods from the seller. The assessee in his reply to the inquiry from the Income Tax Officer, made the following submission:-

"In addition to what is stated therein it is submitted that the goods pledged by M/s. Raxor Chicory Supply Co. with us were the same that were pledged with State Bank of Saurashtra by us. Raxor Chicory Supply Co. purchased the said goods from Jamnagar Agricultural Products and Processing Co-operative Society Ltd., who originally had pledged with Jamnagar District Co-operative Bank Ltd., when Raxor Chicory Supply Co., purchased chicory roots from Jamnagar

Agricultural Products Co-operative Society Ltd., the goods were delivered through Jamnagar District Co-operative Bank Ltd. as the same were within the custody of the bank, directly to our godown as the same were to be pledged with us by Raxor Chicory Supply Co. In short goods were delivered to our godown through Jamnagar District Co-operative Bank Ltd. and we pledged the same to State Bank of Saurashtra meaning thereby that goods which were within the custody of Jamnagar District Co-op. Bank Ltd. were transferred to the custody of State Bank of Saurashtra and hence delivery given by Jamnagar District Co.op. Bank Ltd. on various dates were the dates on which the goods were delivered to us and in turn the dates on which we pledge the same with State Bank of Saurashtra. Though State Bank of Saurashtra has shown dates of pledge on 18.9.73 and 19.9.73, the actual pledge were made on different dates as stated in our above letter."

The assessee had also executed two trust receipts in favour of Bank on 18th and 19th Sept. 1973.

A statement of the Branch Manager of State Bank of Saurashtra was also recorded. As regards the Trust receipt, he has stated that it was with a view to ensure that the full delivery of the goods pledged was completed by the end of the same day and not on subsequent dates. The Bank Manager had shown the pledge of goods in its register on 18th and 19th Sept. 1973.

The assessing authority rejected the assessee's plea that pledge of the goods received under transaction with Raxor took place on four days namely 18th to 21st Sept. 1973 and the actual pledge has taken place on 18th and 19th Sept. 1973. On reaching this conclusion, it further drew the inference that because assessee had not claimed that goods on 18th and 19th Sept. 73 were supplied to the Bank for pledging from any other source available with him, the difference between the quantity shown to be pledged with the Bank on 18th and 19th Sept. and quantity of commodity actually received from Raxor transacted on these dates represented undisclosed stock of the assessee which found place in pledgement with the Bank and to that extent its value represented income of the assessee from undisclosed source of that year.

Obviously, question whether any actual delivery of 200 MT had taken place on 18th and 19th September, 1973 to the Bank as security or not is primarily a

question of fact and so also whether assessee had any undisclosed stock in his possession to represent deficiency between the goods received from the Raxor and pledged with the Bank is also a finding of fact and can only be examined on the anvil of wellknown principle which vitiates the finding of fact and takes out the rigour of its binding nature.

The facts, that assessee has entered into an agreement to purchase 200 M.T of Chicory from Raxor, that he advanced loan of Rs. 2,30,000/- to the said Raxor by drawing cheques on the State Bank of Saurashtra on the security of goods to be purchased under that agreement, that the said goods were made subject matter of security for the advance of funds by honouring the said two cheques and that the goods under that transaction were in fact received on 18.9.73, 19.9.73, 20.9.73 and 21.9.73 only are not in dispute. It has not been the case of the assessee at any time that he received 200 MT of chicory from Raxor on 18th and 19th Sept. 1973 and pledged the same on that date. It is admitted that though pledge documents were executed on 18th and 19th Sept. 1973, in fact pledge of those goods had taken place only on the four aforesaid dates as and when the part delivery has been received by the assessee at his godown, which were held by him for Bank as security for the aforesaid loan and he had not received the full stocks of the transaction on the two relevant dates to fulfil obligation of actual delivery out of stock to Bank on those days. The assessee has clearly pleaded that though he had executed document of pledge of 200 MT on the two dates in fact goods under transaction had not reached his godown on those days and therefore, they did not become subject of pledge on the two date but became subject matter of pledge on four dates respectively when goods received by the assessee and not earlier to that. There is no dispute upto this extent. The dispute is in respect of two aspects firstly whether actual delivery was given of 200 MT to the Bank as pledge on 18th and 19th Sept. 1973 and secondly, if actual delivery has been accepted to have taken place on 18th and 19th Sept. 1973, whether it leads to further conclusion that the assessee has supplied the deficiency by some undisclosed stock.

The well-known grounds on which the finding of fact becomes a question of law it is based on no material whether it is based on partly relevant and partly irrelevant material and it cannot be said to what extent irrelevant considerations have influenced the finding or it has been arrived at by taking into consideration

irrelevant material and circumstances or by ignoring relevant and material circumstances necessary for reaching a conclusion of fact.

The proposition found its classic expression in *Dhirajlal Girdharlal Vs. Commissioner of Income Tax, Bombay*, reported in AIR 1955 S.C 271, a case arising under Section 66 of The Indian Income Tax Act, 1922 corresponding to Sec. 256 of the I.T Act 1961 in the words of Mahajan C.J.:

"..... if the court of fact whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arises.

It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises".

Since the foundation of addition of Rs. 1,24,000/- representing the value of a part of the stock pledged with the Bank in the assessable income of the assessee for the relevant assessment year is the inference about availability of undisclosed stock of chicory root with the assessee on 18th and 19th Sept. 1973 that is to be first examined whether the finding about the assessee having in possession of undisclosed stock which could be pledged with the Bank is supported by any material and is based on relevant considerations and not tainted with irrelevant consideration. We examine the question on the assumption but without expressing any opinion about the correctness of finding of actual delivery of 200MT of chicory roots having been made to the Bank of 200MT goods on 18th and 19th Sept. 1973 by the assessee. Here, it would be pertinent to notice one very relevant fact which has come on record and has found place in the order of the Tribunal as well. The assessee had pleaded that he had on relevant date 1,56,992 kgs. of stock of chicory roots recorded in its

books of account, which was readily available with it for pledging. Therefore, it had no need to concoct the story of non-delivery if in fact he had delivered the stocks on those two days. The correctness of the fact that the assessee had with him stock weighing 1,56,992 kgs and which was readily available for it to pledge was not questioned and was assumed to be correct. However, no significance to this was attached by the Tribunal or for that matter any of the authorities below, for the reason that assessee has not claimed that any part of that stock was made available for pledging.

In the light of this the scenario which emerges is that assessee actually delivered 200 MT of chicory to the Bank on 18th and 19th September, 1973 for pledge was required to be given as security for financial facility made available by the Bank to the assessee for advancing loan to Raxor for purchase on 200 MT of Chicory roots. The purchased goods were contemplated to be the subject matter of pledge. The pledge documents were executed for 200MT of chicory roots. Though from the order of the Assessing Officer it appears that original pledge letters were available for its perusal at the time of assessment and were part of the assessment records, the same had not been made part of the statement of case. 200 MT of Chicory roots which were pledged with the Bank on 18th and 19th September, 1973 did not entirely come out of the stocks purchased from Raxor. The next question that arises for consideration is whether from this alone any inference could be reasonably drawn that the stocks must have come from undisclosed stocks of the assessee.

We are unable to agree with the learned Counsel for the Revenue that only conclusion possible from these facts is that assessee had pl[edged undisclosed stock unless he would have come out with alternative plea nor we are impressed with the arguments that it lead to even plausible inference in the facts and circumstances of the present case that assessee had pledged undisclosed goods. We have noticed above that assessee has clearly brought to the notice of the Department that he had sufficient stocks in his books of account to supplement the deficiency in actual receipts from Raxor to complete the obligation of pledge. This cannot be said to be of no consequence before a finding could be arrived at about supply of the deficiency in stocks received from Raxor by undisclosed stocks by the assessee. On the contrary, when the assessee's clear case was that he in fact had not pledged 200 MT of Chicory roots on that date but had in fact pledged the requisite quantity of goods covered by the transaction with Raxor on four dates as and when

stock was actually received, it was not for him to plead that he supplied deficiency from some other stock. He has simply pleaded that he had sufficient stock to support his credibility about the stand taken in view of the actual delivery against the pledgement of goods purchased from Raxor. This was possible to say so if the assessee had pleaded that he had in fact delivered 200MT stocks on 18th and 19th Sept. out of goods received from Raxor. In that event, on proof of non-receipt of stock from Raxor on the two dates would have rendered assessee's explanation about actual delivery being related of stock record false and in the absence of any proof furnished by the assessee about source of actual delivery made by him legitimate inference could be drawn against assessee. But where assessee pleads that he did not in fact delivered the stocks of 200 MT on 18th and 19th Sept. because he has not in fact received the stock which was to be pledged with the Bank, and pledge has not taken in fact on these two dates, this plea is not falsified by the fact that assessee had not received the full quantity of chicory roots purchased and agreed to be pledged on the two relevant dates. On the contrary this supports the plea that chicory roots of Raxer transaction could not have been subject matter of actual delivery for pledge on 18th and 19th September. His plea was in consonance with the terms of whole transaction as spelt and in Tribunal's order. Clearly only goods which were contemplated to be subject matter of pledge security were the goods which were to be received from Raxor. Therefore, pledge in terms of agreement could come in existence only on receipt of the goods specified under said transactions.

If the finding is to be accepted that though assessee did not receive 200 MT of the stock under the transaction with Raxor, he actually pledged 200 MT of the stock it only establishes that part of such goods were not stock received from Raxor, but it cannot lead to further conclusion that assessee did not have any other or sufficient stock in his possession, which was disclosed in his books of account, which could be the part of the pledge. On the one hand there was positive evidence, about the existence of necessary quantity of disclosed stock with the assessee which could be part of actual delivery and total want of any evidence to draw inference of any sort that assessee had in his possession any unaccounted stocks from which alone he could have furnished the deficiency in the stocks receivable from Raxor to fulfil his obligation to deliver the goods to the Bank against pledge. In the face of existence of positive material about availability of sufficient

disclosed stock, the finding about the deficiency coming out of undisclosed stock, when assessee's plea about non-delivery has not been accepted, is not supported by any material apart from the same being on ignoring the very relevant material on record about the availability of disclosed stock of the Chicory root in the books of account with the assessee on the relevant dates.

Tribunal apparently appears to have ignored very relevant factor in reaching its conclusion about actual delivery of goods to Bank on 18th and 19th and delivery of undisclosed stock of chicory roots. The case of the assessee had through out been that the financial accommodation in question sought from the Bank was in connection with goods to be purchased from Raxor and only goods to be purchased was to be security for said financial accommodation. This part of the whole transaction had not been at issue at any time. Even the Bank Manager had accepted that Trust receipts were taken from the borrower to ensure the full delivery of goods pledged is completed by the end of day. Reference to Trust Receipts which form part of statement of case goes to show that they were executed on 18th and 19th Sept. 1973. They also show that they related to chicory roots to be received from Rexor Chicory Supply Co. and delivery was to come from Jamnagar District Co-op. Bank Ltd. The assessee had also placed on record documents showing that goods to be supplied to assessee were in fact in possession of Jamnagar District Co-operative Bank and actual delivery was to be made from said Bank. Further facts which are clear from those two receipts are that documents of these goods were in the first instance handed over to Bank as security. Trust receipts were executed in lieu of handing over these documents to assessee by the Bank and securing that when delivery of the said goods is taken by the assessee through these documents the same remain security of Bank, in respect of the transaction. We reproduce one of the Trust receipts, the other is in identical term:-

"In consideration of your handing over to me/us the R.Rs of the goods as per particulars at the foot of this receipt held by your Bank as security towards our Cash credit account, we hereby undertake to clear the said goods in trust for the Bank store them in godowns as directed by the Bank."

Particulars of Goods above referred:

RRNo.	Date	From where received	Particulars of goods
18.9.73		Rexor Chicory Supply	Chicory roots
		from Jamnagar	
		Dist. Co-op.Bank	
		Ltd. Jamnagar.	

This establishes in unmistakably clear terms that documents of goods were handed over to assessee on stipulation that goods of the documents when received by the assessee shall be held by him as security for the Bank. There was no stipulation that goods will be received on the very date on which the trust receipt has been executed, as stated by the Bank Manager. This statement on the face of it is contrary to document itself. Secondly only specific goods covered by documents handed over to assessee were to remain security in the hands of assessee when received by him and the same was to be stored at the direction of the Bank, not necessarily at the godowns owned by the Bank. There was no room to conclude that any other goods than those covered by the receipts handed over to assessee were even required to be pledged as security with the Bank. The assessee's case through out has been consistent with these terms. It was not the case of the Bank either that assessee had not acted in accordance with the terms of stipulations, nor there was any material with the revenue to discard the assessee's explanation that he has in fact acted in accordance with stipulation that the goods received from Rexor Supply Co. became part of security as and when received at his godown and not before. It is not in dispute that goods from Rexor Supply covered by documents delivered to assessee by the Bank reached him between 18th to 21st Sept. and not on 18th and 19th Sept. only when the receipts were executed. When it was nobody's case that any other goods were required to be pledged on 18th and 19th Sept. 1973, irrespective of the delivery of goods from the seller, and in fact those goods were received 2 days later, we fail to understand what was the material on the basis of which one could reach the conclusion that assessee has in fact pledged the goods to cover the security under the transaction before receiving the goods. In our opinion the Tribunal apparently was swayed by wholly irrelevant considerations in the first place in assuming that any goods were required to be pledged on 18th and 19th Sept. de hors the stipulations between the party. It ignored the vital aspect of the stipulation between the parties as to requirement of security, which clearly spelt out from Trust Receipts, which was very much before it. Yet another error which the Tribunal committed was to assume,

without any basis, that on 18th and 19th Sept. assessee was in possession of undisclosed stock to fill the deficiency in actual receipts. As discussed above, there was no basis for such assumption in the facts and circumstances of present case. One more relevant circumstance which has been lost sight of is that initial security has come into existence, not by actual delivery of goods, but by delivery of documents of goods which was yet to be received. These documents were redelivered by assessee on 18th and 19th respectively with stipulation that goods secured under those documents shall be held by assessee as security for Bank and shall be also as per its direction. It did not stipulate actual physical delivery of the same to Bank. The documents of pledge were also executed on 18th and 19th Sept. respectively for 100 MT each, that is to say contemporaneously with execution of Trust Receipts. In the light of those two factors it stands to reason that in lieu of delivery of documents of goods to customer with stipulation that he shall hold the goods in trust for the Bank, pledge document in respect of the goods covered by documents have been obtained on respective dates to make possession the goods when received subject matter of security the moment they come in possession of the assessee and were to be held in trust for the bank.

While taking into consideration the statement of Bank Manager, the revenue authorities ignored the principle that ordinarily where terms of an agreement are documented, oral evidence in respect of the term cannot be taken into consideration. The Bank Manager while explaining the meaning of Trust Receipts has stated that Trust Receipts are executed to ensure delivery of the goods covered by documents on the very day. This was clearly not to be found in the Trust Receipt. The Trust Letter/Receipt is a well-known term in the field of Banking. In Dictionary of Banking by Gerald Klein, Trust Letter/Receipt has been explained:

"Trust letter/receipt. Where a produce loan has been given by a banker to his customer, and the goods are held by the bank as security for the loan, then in order to repay the loan, the customer needs to sell the goods. For this purpose a trust letter is signed, making the customer the agent of the bank. This protects the bank from the customer's bankruptcy and any claim from the insolvency practitioner. It requests that the customer protects the goods and on sale transfers the proceeds to the bank. The

trust receipt is delivered to the bank who will on receipt give the customer a letter to the warehouse-keeper requesting that the goods be transferred into the name of the customer."

In Black's Law Dictionary the term has been stated to mean;

"Trust receipt. A pre-U.C.C security device now governed by Article 9 of the Code. A receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. Today there usually must be a security agreement coupled with the filing of a financing statement. Method of financing commercial transactions by means of which title passes directly from manufacturer or seller to banker or lender who as owner delivers goods to dealer in whose behalf he is acting secondarily, and to whom title goes ultimately when primary right of banker or lender has been satisfied."

From the above it is abundantly clear that Trust Letter/Receipts are executed to ensure that goods, which are either in possession of bank are released to the debtor or are to be received by the buyer remain as security for the Bank while in custody of the buyer. It has nothing to do with time and act of delivery of goods to Bank. Moreover, this also make it clear that Trust Letter/Receipt, in case goods are yet to come in possession of the customer, are executed and such goods are received and delivered by the customer as security on behalf of the Bank. That is to say where Trust Letter is executed in respect of document of title the goods covered by these document only become subject of security or in other hands specific goods relating to which documents are handed over to debtor by the financier alone are intended to be subjected to security agreement. The statement of Bank Manager that Bank was not concerned with goods received from Raxor but was only concerned with customer, so far as goods covered by Trust Receipts are concerned, was clearly contrary to trade practice of Trust Letter/Receipts and terms contained therein. The Tribunal failed to notice this very vital aspect of the matter.

As a result, we answer question No.1 referred to

us in the negative, that is to say in favour of the assessee and against the Revenue by holding that on the material before it the Tribunal could not have reasonably reach the conclusion that assessee had actually delivered 200MT of chicory roots to Bank of 18th and 19th Sept. and part of such delivery came out of his undisclosed stock and that Tribunal has reached its conclusions by partly ignoring relevant material and circumstances and partly by irrelevant considerations, hence the same stand vitiated.

So far as question No.2 is concerned, both the learned Counsel are in agreement and in our opinion rightly so, that making reference to voluntary disclosures by the assessee for the assessment year 1971-72 to 1974-75 was not relevant for the consideration of the question about actual delivery or non-delivery of the 200 MT of Chicory Roots on 18th and 19th Sept. 1973 nor about the conclusion regarding supply of undisclosed stock to fill in the deficiency in the actual receipt of stocks under Raxor transaction for establishing nexus between the said transaction and having income from undisclosed sources during the relevant Assessment Year. The same is also therefore answered in negative, that is to say in favour of the assessee and against the revenue.

Accordingly, this reference stands disposed of with no order as to costs.
